

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

**HAYDEN GATEWAY LLC and
BLOC DISPENSARY LLC,**

Plaintiffs,

v.

**ADVANCED FLOWER CAPITAL INC.
and AFC AGENT LLC,**

Defendants.

CIVIL ACTION NO. 3:25-CV-02789

**DECLARATION OF
VASILLIOS PAPATHEOFANIS**

1. I am the Controller of Justice Cannabis Co. and its subsidiaries and affiliates. I have been with Justice since February 6, 2024. I am familiar with all of the bank accounts utilized by Justice and its subsidiaries, and with the entities' cash-flow, and with the history of the loan between AFC Gamma and Justice.

2. Over the course of the four-year life of the loan, AFC Gamma has disbursed somewhere between \$50 and \$65 million. AFC Gamma charged Justice close to \$15 million in PIK/capitalized interest and \$10 million in loan fees.

The Scheduled Cash Sweeps and Justice's Loan Payments

3. Since summer 2023, AFC Gamma has controlled the Hayden Account and the Bloc Operating Account as a result of a Deposit Account Control Agreement, or DACA. Per the 2024 Forbearance agreement a second Bloc Tax Reserve Account was opened in May 2024 to hold reserves for tax payments and the Justice portion of Scheduled NJ Cash Sweeps (defined below). Pursuant to the DACA, AFC Gamma has had a veto over those bank accounts, and AFC

Gamma has to approve every dollar spent from those accounts. AFC Gamma must approve each and every check or electronic payment before it leaves the account, down to the penny.

4. Since the 2024 Forbearance, Justice's monthly payment on the loan is accomplished via Scheduled Cash Sweeps of the Hayden Account and the Bloc Accounts. The Scheduled Cash Sweeps include a biweekly Scheduled NJ Cash Sweep and a monthly Scheduled PA Cash Sweep, which are conducted as follows:

5. The **Scheduled NJ Cash Sweeps**, which took place shortly after Justice's biweekly payroll, were conducted as follows, pursuant to section 5.9 of the 2024 Forbearance:

a) AFC Gamma calculated Ending Cash, which is the amount of cash in the Bloc accounts after payroll and the weekly payment of all outstanding bills, less a set percentage of retail sales (which is transferred to a separate tax reserve account, the "tax reserve"), less the \$300,000 minimum balance that the account is required to maintain.

b) AFC Gamma swept 75 percent of the Ending Cash from the Bloc accounts to its own bank accounts, applied toward the loan.

c) Plaintiffs were obligated to use the remaining 25% of Ending Cash to pay any additional tax liability above the tax reserve and pay down accumulated bills that had accrued prior to the 2024 Forbearance.

d) Beginning in January 2025, Plaintiffs had paid off all the accrued bills and were therefore permitted to use a portion of their 25% to reimburse Justice \$40,000 per month for overhead expenses incurred by its corporate offices, such as HR, accounting services, compliance functions, and the like. AFC Gamma has refused to approve those reimbursements, which currently total \$120,000.

6. The Scheduled PA Cash Sweeps took place on a monthly basis, under a slightly different formula. For operational reasons, a much larger portion of Pennsylvania revenues were reserved for taxes.

7. The parties undertook the Scheduled NJ Cash Sweeps every other week, and the Scheduled PA Cash Sweeps roughly every month, for almost a year, assuring that AFC Gamma received all revenues generated by Justice in excess of operating expenses. Moreover, AFC Gamma had to approve all operating expenses on a line-item basis. Thus, AFC Gamma controlled the accounts, and there was no possibility that Justice could divert any funds from those accounts or apply those funds to anything not approved by AFC Gamma.

8. Justice has made its minimum monthly payment of \$250,000, and sometimes more, via the cash sweeps. It has made every payment since March 2024 on time.

9. During the time when Bossidy was CRO, Justice was unable to pay down any of the loan principal, which continues to grow as interest gets added on.

The Wrongful Transfers

10. On April 10, 2025, without notice to or permission from Hayden, AFC Gamma took \$1,500,000 from the Hayden's Account and transferred it to AFC Gamma's bank account. This was money that had been accumulating in the account and set aside for payment of Hayden's taxes.

11. At the same time, AFC Gamma also transferred \$288,501.63 from Plaintiff Bloc's New Jersey bank accounts to AFC Gamma's bank account, again without notice to or permission from Bloc.

12. The amounts seized by AFC Gamma were not part of the Scheduled NJ or PA Cash Sweeps, and the amounts seized exceeded by well more than a million dollars the amount that AFC Gamma was entitled to transfer under any Scheduled Cash Sweeps.

13. Specifically, the Scheduled NJ Cash Sweep should have been approximately \$72,000, and should have occurred Friday, April 11. Instead, AFC Gamma took \$288,501.63 on April 10.

14. Moreover, the amounts seized by AFC Gamma left the balance of Bloc's operating account far below the \$300,000 minimum balance required by the 2024 Forbearance. Bloc was left perilously illiquid, extremely vulnerable to any unanticipated expenses.

15. Likewise, the Scheduled PA Cash Sweep should have been approximately \$140,000. Instead, AFC Gamma seized one and a half million dollars (\$1,500,000). AFC Gamma's theft of those funds left the Hayden Account without a sufficient reserve for taxes.

16. Had the unauthorized transfers taken place prior to the payroll run, Bloc and Hayden would not have been able to pay their 207 employees. Had a substantial vendor payment not hit the Bloc account the same day, AFC Gamma's theft would have left Bloc unable to pay its bills.

17. Bloc and Hayden are operating businesses, incurring ongoing bills and expenses of approximately \$300,000 to \$500,000 per week, plus payroll, all paid from the very bank accounts AFC Gamma raided.

18. If AFC Gamma continues to take money out of those accounts without authorization or justification, Bloc and Hayden will very soon be unable to pay their bills as they come due. That failure will have significant downstream effects on the many New Jersey and

Pennsylvania companies and individuals with whom Bloc and Hayden do business. Bloc and Hayden may literally be unable to keep the lights on in six dispensaries and a cultivation facility.

19. AFC Gamma's actions over the last week have already left Bloc and Hayden dangerously short of operating cash. Any further withdrawals from those accounts will leave Plaintiffs unable to pay their employees on payday, which will leave 207 employees throughout New Jersey and Pennsylvania without a paycheck, as the first of the month looms. The vast majority of those employees are hourly employees making \$50,000 per year, which means that missing payroll would create tremendous hardship.

"Restricted Payments" and Inter-Company Transfers

20. AFC Gamma's allegations concerning Restricted Payments relate to the operating bank account for Hayden Gateway LLC (the "Hayden Account"). I have thoroughly reviewed that account and all underlying transactions.

21. For the purpose of this analysis, I have divided the Justice entities into the "Borrower Group," meaning the New Jersey and Pennsylvania entities that are secured by AFC Gamma's loan, and the "Non-Borrower Group," meaning all of the other Justice entities, such as JG IL LLC, JG Utah LLC, and others. That simplifies the discussion so that I can identify funds flowing between the Borrower Group and the Non-Borrower Group.

22. Distinct from the Restricted Payments allegations, AFC Gamma claims the Justice used "proceeds of AFC's financing in violation of the Credit Agreement's restrictions." That claim is false. While true that the Hayden Account was used to make payments on behalf of the Non-Borrower Group, the funds used were unquestionably not AFC financing.

23. AFC Gamma alleges that between September 1, 2021 and July 31, 2023, Justice transferred "nearly \$20 million" from the Hayden Account to the Non-Borrower Group; AFC

Gamma concludes from that math that the Borrower Group subsidized the Non-Borrower Group by nearly \$20 million. That allegation is false. In fact, the Justice entities outside of New Jersey and Pennsylvania subsidized the underlying AFC Borrowers by many millions of dollars.

24. **Total cash between the groups:** I first examined not just the records of a single bank account, but the financial statements of all the Justice entities, including both the Borrower Group and the Non-Borrower Group. That examination revealed that the total “Intercompany Due (to)/from Related Entities” balance for the Borrower group went from (\$14.2M) on 8/31/2021 to (\$31.9M) on 7/31/2023. This signifies a net investment into the Borrower Group of \$17.7M from the Non-Borrower Group.

25. **Cash in and out of the Hayden Account:** I next analyzed the transactions into and out of the Hayden Account. That analysis also showed a net inflow of cash from the Non-Borrower Group to the Borrower Group.

26. By way of background, banking has proved to be a difficult service for cannabis companies to secure. Even though cannabis is legal in both Pennsylvania and New Jersey, it remains illegal at the federal level, so most banks will not accept deposits from cannabis companies. Justice was able to secure an account with Parke Bank that became the Hayden Account. Thus, for the period from September 1, 2021 until December 31, 2022, the Hayden Account served as the corporate bank account for all the Justice entities.

27. **Transfers from the Non-Borrower Group:** AFC Gamma is correct that money attributable to the Borrower Group did leave the Hayden Account and was transferred to the Non-Borrower Group. But AFC Gamma neglected to mention that, during that same period, \$15.1 million was transferred into the Hayden Account from the Non-Borrower Group. Those transfers are set forth in the table below:

Related Entity	Net Transfers to/(from) Hayden
	Gateway
JG Utah LLC	6,552,855
JG Missouri LLC	5,591,902
SRG Manchester 14779	725,000
Oakland Manager LLC	1,551,178
JG Michigan LLC	887,198
California	5,003
Illinois	(254,200)
	<u>15,058,935</u>

28. **Transfers from owners and investors:** During that same time period, Justice's owners and outside investors or lenders deposited nearly \$9.5 million into the Hayden Account, as depicted in the table below:

Paid Date	Amount	Source Entity
11/19/2021	50,000.00	Oakland Manager LLC - Jon Loevy
12/3/2021	100,000.00	JG Michigan LLC - minority owner
12/9/2021	2,000,000.00	Oakland Manager LLC - loan funding
2/3/2022	93,000.00	Oakland Manager LLC - Mike Kanovitz
2/28/2022	7,165,091.00	Oakland Manager LLC - loan funding
4/1/2022	50,000.00	7 Point of Massachussetts - minority owner
	<u>9,458,091.00</u>	

29. In summary, when one looks simply at a top-line, money-in-versus-money-out analysis, the Non-Borrower Group, the owners, and other sources deposited more than \$24 million into the Hayden Account, exceeding the amount of so-called "Restricted Payments" alleged by AFC Gamma by at least five million dollars. Again, that analysis is limited to the Hayden Account, and does not consider other company accounts.

30. **Payroll allocation:** When one drills down even further to analyze payroll, the Non-Borrower Group subsidized the Borrower Group. From the period of September 1, 2021

until December 31, 2022, all Justice payroll was paid out of the Hayden Account. Beginning January 1, 2023, all Justice payroll, including Borrower Group Payroll, was paid out of a different Justice account (the JG IL account). In the first seven months of 2023—that is, from January 1 to July 31, 2023—a total of \$5.6 million in Borrower Group payroll was paid out of the JG IL account, plus another \$793,000 in health insurance premiums attributable to the Borrower Group payroll.

31. To summarize, after a thorough review of the transactional data of all of the Justice entities' accounts for the relevant time period, the Non-Borrower Group subsidized the Borrower Group by at least \$5.2 million, as reflected in the table below:

Period	Borrower	Non-borrower	Grand Total
Sep 1, 2021-June 30, 2023	(1,474,785)	1,768,555	293,770
July 1, 2022 - Aug 26, 2022	(813,364)	1,023,100	209,736
Aug 27, 2022 - July 31, 2023	3,769,043	(3,957,323)	(188,279)
Net Total - Bank Account	1,480,894	(1,165,667)	315,227
Payroll Paid	(5,633,382.24)	5,633,382.24	-
Cigna Paid	(792,859.79)	792,859.79	-
Net	(4,945,347.74)	5,260,574.87	

Inter-Company Transfers After the DACA

32. Note that these analyses and calculations are preliminary, as I have not yet had time to analyze each transactions. It is likely that I will locate more instances of payments from the Borrower Group to the Non-Borrower Group that are reimbursements for expenses incurred on behalf of the Borrower Group.

33. In 2023, Justice's new CEO reconstituted the company's accounting, and began the process of segregating the company's various subsidiaries' records and bank accounts by state. By the end of 2023 (before the March 2024 Forbearance agreement was reached) no payments ever left the Hayden or Bloc Accounts for expenses related to other subsidiaries, and certainly none that AFC Gamma has ever identified.

34. In fact, by the Summer of 2023, AFC Gamma assumed control of Justice's Pennsylvania and New Jersey bank accounts, which meant that all expenditures had to be expressly approved by AFC Gamma.

Audited Financials and the 2025 Projections

35. On March 17, AFC Gamma CEO Neville emailed me and requested audited financials by the next day, March 18.


36. Audited financial statements for a company of Justice's size are not something that can be produced in three business days. An auditing firm must be engaged, and the process takes a minimum of three months, and typically costs upwards of \$100,000. A full, audited financial statement in three days is impossible.

37. Because audited financials are extremely expensive, cumbersome, and labor-intensive, to my knowledge, AFC Gamma has never required audited financials since 2022.

38. AFC received 2025 Projections, prepared by Bossidy, on January 30. Because the Justice team disagreed with those projections, after Bossidy was terminated, I provided the Justice team's revised 2025 Projections to AFC as well.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4/21/2025


Vasillios Papatheofanis